Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-952

EDDIE C. THOMAS,

Petitioner,

VS.

THE REVIEW BOARD OF THE INDIANA EMPLOYMENT SECURITY DIVISION, WILLIAM H. SKINNER, J. FRANK HALEY, and RALPH MILES, as members and constituting the Review Board of the Indiana Employment Security Division,
and
BLAW-KNOX FOUNDRY & MACHINERY, INC.,

Respondents,

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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Respondents, Review Board of the Indiana Employment Security Division, William H. Skinner, J. Frank Haley, Ralph Miles, and Blaw-Knox Foundry & Machinery, Inc., respectfully pray this Court to deny issuance of a writ of certiorari to the Indiana Supreme Court, thereby refusing to review the decision entered by that Court in cause number 779 S 192 on July 18, 1979.

OPINIONS BELOW

The opinion of the Supreme Court of Indiana appears at 391 N.E. 2d 1127 and is appended to the Petition for Writ of Certiorari. The Supreme Court of Indiana granted the respondents' Petition for Transfer, filed after the Court of Appeals had reversed the decision the referee of the Indiana Employment Security Division. The decision of the Court of Appeals of Indiana appears at 381 N.E. 2d 888, also appended to the Petition for Writ of Certiorari. The Supreme Court of Indiana denied a Petition for Rehearing in an unpublished order of September 20, 1979.

JURISDICTION

Petitioner alleges jurisdiction in this Court pursuant to 28 U.S.C. § 1257(3), ostensibly on the basis that the Indiana Supreme Court had declared a state statute valid, alleged to contravene First Amendment rights to freedom of religion under the Constitution of the United States, on federal grounds. Respondents contend that the Indiana Supreme Court based its decision, on independent, non-federal grounds. Respondents assert, therefore, that this Court has no jurisdiction to issue the writ prayed for since Petitioner has not presented a federal question of substance.

QUESTIONS PRESENTED FOR REVIEW

The Respondents would assert that the issue presented at this time is whether the Petitioner has properly presented to this Court a federal question of substance.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States reads as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Indiana Code § 22-4-1-1 (Burns 1974) reads as follows:

As a guide to the interpretation and application of this act the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is declared hereby to be a serious menace to the health, morale and welfare of the people of this state and to the maintenance of public order within this state. Protection against this great hazard of our economic life can be provided in some measure by the required and systematic accumulation of funds during periods of employment to provide benefits to the unemployed during periods of unemployment and by encouragement of desirable stable employment. The enactment of this measure to provide for payment of benefits to persons unemployed through no fault of their own, to encourage stabilization in employment, and to provide for a state employment service is, therefore, essential to public welfare; and the same is declared to be a proper exercise of the police powers of the state.

Indiana Code § 22-4-15-1 (Burns 1974) reads as follows:

"With respect to benefit periods including extended benefit periods established subsequent to July 6, 1974, and before July 3, 1977, an individual who has voluntarily left his employment without good cause in connection with the work or who was discharged from his employment for just cause shall be ineligible for waiting period or benefit rights for the week in which the disqualifying separation occurred and until he has subsequently earned remuneration in employment equal to or exceeding the weekly benefit amount of his claim in each of ten

(10) weeks. The weeks of a disqualification period remaining at the expiration of an individual's benefit period will be carried forward to an extended benefit period or to the benefit of a subsequent claim only if the first week of such extended benefit period or subsequent benefit period falls within ten (10) consecutive weeks from the beginning of the disqualification period imposed on the prior claim."

STATEMENT OF THE CASE

Petitioner Eddie C. Thomas filed claim for unemployment compensation benefits upon termination of his employment with Blaw-Knox Foundry & Machinery, Inc. (hereafter Blaw-Knox). The Indiana Employment Security Division made an initial determination on December 11, 1975, that Petitioner was not eligible for benefits because he had voluntarily left his employment without good cause in connection with the work. On that same date, Petitioner filed his Request for Hearing Before Referee. The referee affirmed the initial determination.

Petitioner thereupon filed his Request for Appeal to Review Board on March 5, 1976. On November 30, 1976, the Review Board of the Indiana Employment Security Division affirmed the referee decision.

Thereupon, Petitioner filed an appeal before the Court of Appeals of Indiana. That Court reversed the Review Board's decision on October 26, 1978. A Petition for Rehearing was denied without opinion on November 22, 1978.

The Supreme Court of Indiana reversed the Court of Appeals on July 18, 1979. The Petitioner's Petition for Rehearing was denied on September 20, 1979. The relevant decisions and opinions are appended to the Petition for Writ of Certiorari.

REASONS FOR DISALLOWANCE OF THE WRIT

The Petitioner has not properly presented to this Court a federal question of substance. The Supreme Court of Indiana in affirming the administrative determination that Petitioner did not qualify for unemployment benefits based its decision on three (3) nonfederal, independent grounds.

First, the Supreme Court of Indiana found that Petitioner failed to establish "good cause" for abandoning his empoyment. The Indiana Court of appeals, in *Gray v. Dobbs House, Inc.* 357 N.E. 2d 900 (1976), has held that an employee who has voluntarily quit, to avoid disqualification must establish:

> "(a) that his reasons for abandoning his employment were such as would impel a reasonably prudent man to terminate under the same or similar circumstances; and (b) that these reasons, or causes, are objectively related to the employment." 357 N.E. 2d at 903.

This standard is in keeping with purposes of the employment compensation act as is set forth in Ind. Code § 22-4-1-1 (Burns 1974). It is obvious from reading said statute that the purpose of such legislation is to protect the people of Indiana from menacing periods of unemployment, to encourage stable employment and to provide benefits for persons unemployed through no fault of their own. Voluntary unemployment is not compensable unless good cause existed which justifies the termination. This good cause must be job-related and objective in character, not just personal, subjective reasons unique to the employee. *Geckler v. Review Board of Indiana Employment Security Division,* 244 Ind. 473, 193 N.E. 2d 357 (1963).

Secondly, the Supreme Court of Indiana found that Petitioner failed to show what, if any, religious tenet would

be violated by his continued employment. As the Court noted in its decision appended to the Petition for Writ of Certiorari there is no evidence below that Petitioner's fellow church members ever determined if his continuing to work at Blaw-Knox would violate any tenet of their religion and there is no evidence that his church put any pressure on Petitioner to quit; in fact, Petitioner was uncertain as to his precise beliefs and was concerned about a bomb scare in the plant.

Thirdly, the Court found an award of benefits to persons who abandoned a job for "religious" reasons would amount to support of religion where persons who quit because of "personal" principals are denied benefits. The Supreme Court of Indiana noted in its decision Petitioner does not ask that benefits be extended to him as they are to others, but that they be extended to him when they are denied to others.

Assuming, *arguendo*, that Petitioner's argument regarding Indiana Code § 22-4-15-1 (Burns 1974) presented a federal question, his situation can be distinguished from the case authority he cites, *Sherbert v. Verner,* 374 U.S. 398, 83 S. Ct. 1790 (1963). In *Sherbert,* a Seventh Day Adventist was disqualified from receiving unemployment compensation when her refusal to work Saturdays, her Sabbath, caused employers to refuse to hire her and resulted in her being disallowed benefits because of her failure to accept suitable employment. The United States Supreme Court emphasized the general discriminatory effect of such a disqualification on Sabbatarians as compared to Sunday worshippers for whom it was provided that no employee would jeopardize seniority nor be discriminated against in any manner for refusal to work on Sunday.

The Court in *Sherbert* stated that it was not declaring that a constitutional right to unemployment benefits exists on the part of all persons whose religious convictions are the cause of their unemployment, and specifically limited its holding to the specific facts of that case.

If a state enacts a general law, within their power, which imposes only an indirect burden on religious observance but makes no religious practice unlawful, and its purpose and effect is to advance the state's secular goals such statute is valid. *Braunfeld v. Braun,* 366 U.S. 599, 81 S. Ct. 1147 (1961). Clearly, the burden, if any, imposed by the statute in question, Ind. Code § 22-4-15-1 (Burns 1974) is indirect.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari to the Supreme Court of Indiana should be denied.

Respectfully submitted,

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